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ALEXANDRIA, VA 22313-1450
www.uspto.gov

Deborah G. VandenHoff
Van Tassel & Associates
P.O. Box 2928
Bellaire, TX 77402-2928

In re Application of
WIEDERRECHT, et al.
U.S. Application No.: 10/528,995
PCT No.: PCT/CH02/00151
Int. Filing Date: 13 March 2002
Priority Date: 20 March 2001
Attorney Docket No.: GLN-031US
For: WATCH MOVEMENT

DECISION ON PETITION

UNDER 37 CFR 1.10(e)

This is a decision on applicant's papers filed 25 May 2005 in the United States Patent and Trademark Office (USPTO). The papers are being treated as a renewed petition under 37 CFR 1.10(e). No petition fee is required.

BACKGROUND

On 05 May 2005, applicant was mailed a decision dismissing applicant's petition under 37 CFR 1.10(e) to accept the papers filed 14 March 2005 as having been filed 19 September 2003. Applicant was afforded two months to file any request for reconsideration.

On 25 May 2005, applicant filed the present renewed petition.

DISCUSSION

As detailed in the decision mailed 05 May 2005,

37 CFR 1.10(e) states:

Any person mailing correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";

(3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and

(4) The petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

Applicant previously satisfied items 1 and 2 above.

As to item (3), applicant deposited the Express Mail mailing in question in a USPS drop box and never received a copy of the mailing label from the Postal Service. As such, it is impossible for applicant to provide a copy of the Express Mail mailing label. However, as shown above, in order to satisfy this item as to the requested filing date, applicant may make a showing pursuant to 37 CFR 1.10(d)(3) and that any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS. Applicant has provided such a statement. Specifically, applicant has provided a copy of the firm's "US Express Mail Log." On page 6 of the log the mailing in question is clearly listed along with the Express Mail number: ER275611307US. For the purposes of 37 CFR 1.10(d)(3), the deposit time confirmation box was initialed by counsel, the individual who deposited the mailing, the following morning at 11:00 am. Applicant has therefore satisfied this item.

With regard to item (4), applicant has included an affidavit from Ms. VandenHoff detailing her preparation of the Express Mail package in question and her depositing of said package in the USPS Express Mail drop box on Friday, September 19, 2003 at 1:45 pm; prior to the last scheduled pick-up of the day at 3:45 pm. The affidavit confirms that the package contained the proper amount of postage. It is clear from an examination of the firm's US Express Mail log and the affidavit that Ms. VandenHoff is familiar with the USPS Express Mail system and that the papers filed on 14 March 2005 were true and complete copies of the papers originally filed on 19 September 2003.

As such, it is proper to grant applicant's petition at this time. The papers filed 14 March 2005 are accepted as true and complete copies of the papers originally mailed 19 September 2003. As explained in counsel's affidavit, the original papers did not contain an

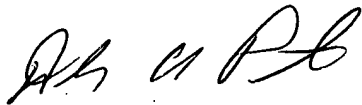
executed oath or declaration of the inventors. An executed declaration was filed on 14 March 2005. An examination of the declaration finds it to be in compliance with 37 CFR 1.497(a)-(b). Therefore, all of the requirements of 35 U.S.C. 371 for entry into the national stage in the United States were satisfied on 14 March 2005.

CONCLUSION

Applicant's renewed petition under 37 CFR 1.10(e) is **GRANTED**.

This application will be given an international application filing date of 13 March 2002 and a date of **14 March 2005** under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

This application is being returned to the DO/EO/US for processing in accordance with this decision.



Derek A. Putonen
Attorney Advisor
Office of PCT Legal Administration
Tel: (571) 272-3294
Fax: (571) 273-0459